

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Northern Division**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO. 3:22-cv-000686-HTW-LGI

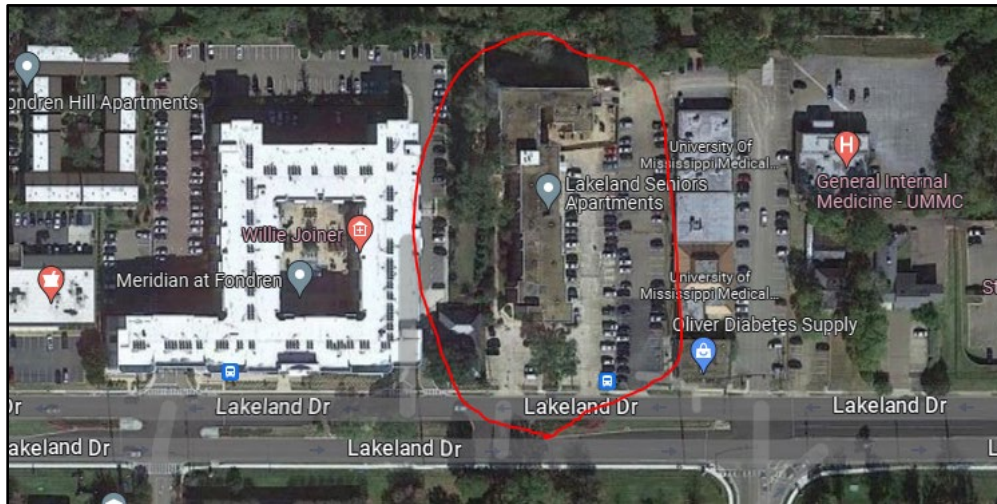
THE CITY OF JACKSON, MISSISSIPPI

DEFENDANT

MOTION FOR LEAVE TO FILE SUIT

Lakeland Seniors, LLC (Lakeland Seniors) moves the Court for leave to file suit against Jxn Water, Inc. (Jxn Water).¹

Lakeland Seniors owns an apartment complex for senior citizens on Lakeland Drive in Jackson, Mississippi. The apartment complex stands between the Meridian apartments to the west and medical offices operated by the University of Mississippi Medical Center (UMMC) to the east. The following aerial photograph shows the apartment complex's location:



¹ Given this motion's length and nature, Lakeland Seniors asks that the Court waive any requirement of a separate memorandum brief.

Lakeland Seniors' efforts to improve its parking lot, located on the east side of its building, have been frustrated by the ongoing discharge of excess water and other aqueous substances coming from the neighboring property.

Through dye-tracing, in-camera scoping, and repeated visual inspections, Lakeland Seniors has determined that at least one source of that discharge is infrastructure for which Jxn Water is now responsible or likely will soon be responsible following the expansion of Jxn Water's duties. Specifically, a sewer line east of Lakeland Seniors' property is discharging sewer water onto the property, and a water meter and fire hydrant are leaking too. Lakeland Seniors summarized these issues for Jxn Water in the letter attached as **Exhibit 1**. The problems summarized in the letter are ongoing.

Under this Court's November 29, 2022 Order (Order), "No suit shall be filed against the ITPM or ITPM Agents without leave of this Court except as provided in 28 U.S.C. § 959(a)." Doc. 6, p. 15, ¶ 9(b). The ITPM is "Edward 'Ted' Henifin." Doc. 6, p. 8, ¶ 4.

Lakeland Seniors does not believe the immunity described in the Order applies to Jxn Water, which is neither Mr. Henifin (the ITPM) nor an agent of Mr. Henifin (an ITPM agent). If anything, Jxn Water is Mr. Henifin's principal, not his agent. Jxn Water is a corporation formed under Mississippi law, listed in good standing with the Mississippi Secretary of State. Mr. Henifin is listed as Jxn Water's Director and Registered Agent. **Exhibit 2** (2023 Corporate Annual Report).

But an attorney for Jxn Water thinks the immunity provided by the Order applies to the corporation. *See* **Exhibit 3** (8/16/23 Email). Despite Lakeland Seniors' belief that the immunity does not apply to Jxn Water, out of an abundance of caution and out of respect for this Court's orders, Lakeland Seniors is filing this motion for leave to sue.

A 90-day period is currently running under the Mississippi Tort Claims Act. *See* Miss. Code § 11-46-11. Once that period runs on November 9, 2023—assuming this dispute is not resolved before then—Lakeland Seniors will need to file suit against Jxn Water, both to enjoin the ongoing problems caused by Jxn Water’s infrastructure and for money damages. For this reason, Lakeland Seniors respectfully asks this Court to expedite its consideration of this motion or, alternatively, excuse Lakeland Seniors for filing suit at the end of 90 days as a necessary protective measure to prevent any applicable statute of limitations from running.

The Court should grant Lakeland Seniors leave to file suit against Jxn Water.

Respectfully submitted this 1st day of September, 2023.

/s/ Simon T. Bailey

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Simon T. Bailey

Simon Bailey